


U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILEDUNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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STEVEN DIMAGGIO,

Plaintiff,

v.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

Case No. 5:13-cv-296

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 15, 17 & 18)

This matter came before the court for a review of the Magistrate Judge's March 31, 2014 Report and Recommendation ("R & R"). Plaintiff has filed a motion to remand pursuant to sentence six of 42 U.S.C. § 405. (Doc. 15.) Plaintiff alleges that new evidence should be considered by the Commissioner on remand. Defendant opposes the motion and has filed a motion for order affirming the decision of the Commissioner. (Doc. 17.) Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,


150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his six page R & R, the Magistrate Judge carefully reviewed the factual record and the motions before the court and determined that among other things, the new evidence presented by the Plaintiff does not relate to the alleged disability period and does not present a reasonable possibility of influencing the Commissioner to decide the Plaintiff's claim differently. Accordingly, the Magistrate Judge recommends that the court deny Plaintiff's motion for remand and grant Defendant's motion for order affirming the decision of the Commissioner. Neither party has objected to the Magistrate Judge's recommendations which the court finds well-reasoned.

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Opinion and Order, and DENIES Plaintiff's motion to remand (Doc. 15), and GRANTS the Defendant's motion for order affirming the decision of the Commissioner (Doc. 17).

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 28th day of January, 2015.

A handwritten signature in black ink, appearing to read 'Christina Reiss', written over a horizontal line.

Christina Reiss, Chief Judge
United States District Court